IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.135 of 2006

Decided on: August 8, 2006

Sushila Devi and another **.....Appellants.**

VERSUS

Prem Chand **.....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. Bhuvnesh Sharma, Advocate.

For the respondent : Mr. R.K. Sharma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellants-plaintiffs filed a suit seeking issuance of permanent prohibitory injunction restraining the respondent-defendant from causing interference in their possession over land measuring 0-10-55 hectares, bearing Khasra No.605, alleging that this land had been in their possession from the very beginning and that the respondent-defendant, without any right, title or interest in the land, had been threatening to dispossess them.

3. Suit was contested. Respondent-defendant took the plea that on completion of consolidation when repartition took place the suit land had been allotted to him but that arrangement of repartition was challenged by the plaintiffs by filing objections before the Consolidation Officer, who, while accepting those objections

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Whether the reporters of the local papers may be allowed to see the judgment?

reversed the arrangement of repartition and ordered the allotment of the suit land to the plaintiffs. Respondent-defendant challenged that order of Consolidation Officer by filing appeal before the Settlement Officer (Consolidation). That appeal was accepted and the allotment made in favour of the respondent-defendant, on repartition by the field staff of the Consolidation Department, was affirmed. Plaintiffs then filed a further appeal before the Additional Director (Consolidation), who ordered the parties to maintain status quo. The defendant claimed that he had been put in possession of the suit land when the repartition was carried out on the spot by the consolidation staff and ever since he had been in possession.

4. The trial Court returned the finding that the appellants-plaintiffs were in possession and that the defendant was trying to dispossess them forcibly. With this finding the trial Court decreed the suit of the appellants-plaintiffs. Respondent-defendant went in appeal to the Court of District Judge. The learned District Judge has accepted the appeal and dismissed the suit.

5. The grievance of the appellants-plaintiffs is that the first Appellate Court has not appreciated the evidence correctly. It is alleged that the respondent-defendant had made an admission, while he was in the witness-box as DW-1, that the possession of the suit land was with the plaintiff but despite such admission, the first Appellate Court has reversed the well-reasoned finding of the trial Court that the possession of the suit land was with the plaintiffs.

6. I have heard the learned counsel for the parties and gone through the record, especially the statement of respondent-defendant Prem Chand, which he made as DW-1.

7. An overall reading of the statement of respondent-defendant shows that he did not make a categorical statement that he was out of possession or that the possession was with the plaintiffs. In the very opening sentence of his statement, he testified that he was in possession. In the concluding sentence of his examination-in-chief, it is recorded that the possession was with the plaintiffs. In the cross-examination, he has denied the suggestion that the possession was with the appellants-plaintiffs. The first Appellate Court has observed that in the concluding sentence of the examination-in-chief word "W*adi"* (plaintiff) appears to have been wrongly written and that in fact it should have been "*Pratiwadi"* (defendant). I see no reason to disagree to this observation of the first Appellate Court because everywhere in the rest of his statement, the witness has stated that the possession is with him (the defendant).

8. Since no question of law, muchless a substantial question of law, arises, the appeal is dismissed.

9. During the course of the hearing of the appeal, it was pointed out by the learned counsel for the appellants-plaintiffs that appeal filed by them before the Additional Director (Consolidation) stands decided in their favour. If that is so, the appellants-plaintiffs can recover the possession by due process of law.

CMP No.193 of 2006

This application is dismissed and the interim order, dated 28.3.2006, passed on this application is vacated.

August 8, 2006(sd) **(Surjit Singh, J.)**